

**Senator Jacob L. Anderegg** proposes the following substitute bill:

**JAIL CONTRACTING AND REIMBURSEMENT AMENDMENTS**

2020 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Jacob L. Anderegg**

House Sponsor: Eric K. Hutchings

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**LONG TITLE**

**General Description:**

This bill modifies provisions related to jail contract and reimbursement rates.

**Highlighted Provisions:**

This bill:

- defines terms;
- modifies the formula used to calculate the rate at which the state pays a correctional facility for housing state inmates under various circumstances; and
- makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

**AMENDS:**

**64-13e-102**, as last amended by Laws of Utah 2018, Chapter 374

**64-13e-104**, as last amended by Laws of Utah 2015, Chapters 412 and 425

**64-13e-105**, as last amended by Laws of Utah 2014, Chapter 436

**ENACTS:**



26 **64-13e-103.1**, Utah Code Annotated 1953

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28 *Be it enacted by the Legislature of the state of Utah:*

29 Section 1. Section **64-13e-102** is amended to read:

30 **64-13e-102. Definitions.**

31 As used in this chapter:

32 (1) "Actual county daily incarceration rate" means the daily incarceration rate  
33 calculated by a county jail that reflects the actual expenses incurred by the county jail for  
34 housing an inmate on behalf of the department, including the costs associated with:

35 (a) executive overhead;

36 (b) administrative overhead;

37 (c) transportation overhead;

38 (d) division overhead; and

39 (e) motor pool expenses.

40 ~~[{+}]~~ (2) "Actual state daily incarceration rate" means the daily incarceration rate  
41 calculated by the department that reflects the actual expenses [of] incurred by the the  
42 department for housing an inmate, including the costs associated with:

43 (a) executive overhead;

44 (b) administrative overhead;

45 (c) transportation overhead;

46 (d) division overhead; and

47 (e) motor pool expenses[;].

48 ~~[(f) medical expenses;]~~

49 ~~[(g) mental health expenses;]~~

50 ~~[(h) dental expenses;]~~

51 ~~[(i) straight line capital depreciation, over a 40-year period, for prison facilities of the~~  
52 ~~department; and]~~

53 ~~[(j) expenses for treatment, including substance abuse treatment, alcohol abuse~~  
54 ~~treatment, sex offender treatment, and alternative treatment.]~~

55 ~~[(2)]~~ (3) "Alternative treatment" means:

56 (a) evidence-based cognitive behavioral therapy; or

(b) a certificate-based program provided by a Utah technical college, as defined in Subsection [53B-26-102\(8\)](#).

~~[(3)]~~ (4) "CCJJ" means the Utah Commission on Criminal and Juvenile Justice, created in Section [63M-7-201](#).

~~[(4)]~~ (5) "Department" means the Department of Corrections.

~~[(5)]~~ (6) "Division of Finance" means the Division of Finance, created in Section [63A-3-101](#).

(7) "Final county daily incarceration rate" means the rate calculated by:

(a) totaling the number of state probationary inmates housed in a county jail facility under Section [64-13e-104](#) for each day of the preceding fiscal year, and

(b) dividing the number described in Subsection (7)(a) by the amount appropriated by the Legislature for the purpose of making payments to counties under Section [64-13e-104](#).

~~[(6)]~~ (8) "Final state daily incarceration rate" means the average actual state daily incarceration rate, calculated, reviewed, and discussed under Section [64-13e-105](#), and approved by the Legislature~~[-under Subsection [64-13e-105\(3\)](#)]~~.

(9) "Median county daily incarceration rate" means the median rate of the actual jail incarceration rates submitted by each county jail under Subsection [64-13e-104](#).

~~[(7)]~~ (10) "State inmate" means an individual, other than a state probationary inmate or state parole inmate, who is committed to the custody of the department.

~~[(8)]~~ (11) "State parole inmate" means an individual who is:

(a) on parole, as defined in Section [77-27-1](#); and

(b) housed in a county jail for a reason related to the individual's parole.

~~[(9)]~~ (12) "State probationary inmate" means a felony probationer sentenced to time in a county jail under Subsection [77-18-1\(8\)](#).

~~[(10)]~~ (13) "Treatment program" means:

(a) an alcohol treatment program;

(b) a substance abuse treatment program;

(c) a sex offender treatment program; or

(d) an alternative treatment program.

Section 2. Section [64-13e-103.1](#) is enacted to read:

**[64-13e-103.1](#). Calculating the average actual state incarceration rate.**

(1) (a) Before September 15 of each year, the department shall calculate, and inform each county and CCJJ of the average actual state daily incarceration rate for the most recent three years for which the data is available.

(b) The actual state daily incarceration rates used to calculate the average rate described in Subsection (1)(a) may not be less than the rates presented to the Executive Appropriations Committee of the Legislature for purposes of setting the appropriation for the department's budget.

(2) (a) The average actual state daily incarceration rate may not be used for purposes of calculating payment or reimbursement under this chapter, unless approved by the Legislature in the annual appropriations act.

(b) Nothing in this chapter prohibits the Legislature from setting the final state daily incarceration rate at an amount higher or lower than:

(i) the average actual state incarceration rate; or

(ii) the final state daily incarceration rate that was used during the preceding fiscal year.

Section 3. Section **64-13e-104** is amended to read:

**64-13e-104. Housing of state probationary inmates or state parole inmates -- Payments.**

(1) (a) A county shall accept and house a state probationary inmate or a state parole inmate in a county correctional facility, subject to available resources.

(b) A county may release a number of inmates from a county correctional facility, but not to exceed the number of state probationary inmates in excess of the number of inmates funded by the appropriation authorized in Subsection (2) if:

(i) the state does not fully comply with the provisions of Subsection (9) for the most current fiscal year; or

(ii) funds appropriated by the Legislature for this purpose are less than 50% of the ~~[average actual state daily]~~ median county daily incarceration rate.

(2) Within funds appropriated by the Legislature for this purpose, the Division of Finance shall pay a county that houses a state probationary inmate or a state parole inmate at a rate of 50% of the final ~~[state]~~ county daily incarceration rate.

(3) Funds appropriated by the Legislature under Subsection (2):

(a) are nonlapsing;

(b) may only be used for the purposes described in Subsection (2) and Subsection (10);  
and

(c) may not be used for:

(i) the costs of administering the payment described in this section; or

(ii) payment of contract costs under Section 64-13e-103.

(4) The costs described in Subsection (3)(c)(i) shall be covered by legislative appropriation.

(5) (a) The Division of Finance shall administer the payment described in Subsection (2) and Subsection (10).

(b) In accordance with Subsection (9), CCJJ shall, by rule made pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, establish procedures for collecting the data from county jails for purposes of completing the calculation of the payment described in Subsection (2) and Subsection (10).

(c) Notwithstanding any other provision of this section, CCJJ shall adjust the amount of the payments described in Subsection (7)(b), on a pro rata basis, to ensure that the total amount of the payments made does not exceed the amount appropriated by the Legislature for the payments.

(6) Counties that receive the payment described in Subsection (2) and Subsection (10) shall, on at least a monthly basis, submit a report to CCJJ that includes:

(a) the number of state probationary inmates and state parole inmates the county housed under this section;

(b) the total number of state probationary inmate days of incarceration and state parole inmate days of incarceration that were provided by the county;

(c) the total number of offenders housed pursuant to Subsection 64-13-21(2)(b); ~~[and]~~

(d) the total number of days of incarceration of offenders housed pursuant to Subsection 64-13-21(2)(b)~~[-]; and~~

(e) the actual jail incarceration rate as calculated by the jail.

(7) (a) On or before September 30 of each year, CCJJ shall:

(i) compile the information from the reports described in Subsection (6) that relate to the preceding state fiscal year and provide a copy of the compilation to each county that submitted a report~~[-]; and~~

(ii) calculate:

(A) the final jail incarceration rate; and

(B) the median jail incarceration rate.

(b) On or before October 15 of each year, CCJJ shall inform the Division of Finance and each county of the exact amount of the payment described in this section that shall be made to each county.

(8) On or before December 15 of each year, the Division of Finance shall distribute the payment described in Subsection (7)(b) in a single payment to each county.

(9) (a) The amount paid to each county under Subsection (8) shall be calculated on a pro rata basis, based on the average number of state probationary inmate days of incarceration and the average state parole inmate days of incarceration that were provided by each county for the preceding five state fiscal years; and

(b) if funds are available, the total number of days of incarceration of offenders housed pursuant to Subsection 64-13-21(2)(b).

(10) If funds appropriated under Subsection (2) remain after payments are made pursuant to Subsection (8), the Division of Finance shall pay a county that houses in its jail a person convicted of a felony who is on probation or parole and who is incarcerated pursuant to Subsection 64-13-21(2)(b) on a pro rata basis not to exceed 50% of the final state daily incarceration rate.

Section 4. Section **64-13e-105** is amended to read:

**64-13e-105. Meeting to discuss daily incarceration rates.**

~~[(1)(a) Before September 15 of each year, the department shall calculate, and inform the counties and CCJJ of the average actual state daily incarceration rate for the most recent three years for which the data is available.]~~

~~[(b) The actual state daily incarceration rates used to calculate the average rate described in Subsection (1)(a) may not be less than the rates presented to the Executive Appropriations Committee of the Legislature for purposes of setting the appropriation for the department's budget.]~~

~~[(2)]~~ (1) Before September 30 of each year, ~~[the following parties]~~ the individuals described in Subsection (2) shall meet to review and discuss:

(a) the average actual state daily incarceration rate, described in ~~[Subsection (1) and]~~

Section [64-13e-103.1](#);

(b) the median actual jail daily incarceration rate; and

(c) the compilation described in Subsection [64-13e-104\(7\)](#)[:].

(2) The following individuals shall meet in accordance with Subsection (1):

(a) as designated by the Utah Sheriffs Association:

(i) one sheriff of a county that is currently under contract with the department to house state inmates; and

(ii) one sheriff of a county that is currently receiving reimbursement from the department for housing state probationary inmates or state parole inmates;

(b) the executive director of the department or the executive director's designee;

(c) as designated by the Utah Association of Counties:

(i) one member of the legislative body of one county that is currently under contract with the department to house state inmates; and

(ii) one member of the legislative body of one county that is currently receiving reimbursement from the department for housing state probationary inmates or state parole inmates;

(d) the executive director of the Commission on Criminal and Juvenile Justice or the executive director's designee; and

(e) the executive director of the Governor's Office of Management and Budget or the executive director's designee.

~~[(3) (a) The average actual state daily incarceration rate, reviewed and discussed under Subsection (2), may not be used for purposes of calculating payment or reimbursement under this chapter, unless approved by the Legislature in the annual appropriations act.]~~

~~[(b) Nothing in this chapter prohibits the Legislature from setting the final state daily incarceration rate at an amount higher or lower than:]~~

~~[(i) the average actual state incarceration rate; or]~~

~~[(ii) the final state daily incarceration rate that was used during the preceding fiscal year.]~~